

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1403 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
NAVALJI THAVRAJI KHARADI

Versus

SISODIA SHIVSINH PRATAPSINH

-----  
Appearance:

MR KV SHELAT for Petitioners

MR VH DESAI for Respondent No. 1, 2, 3, 4, 5

-----  
CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. This is a revision under section 115, CPC, at the instance of the original plaintiffs, who in the suit filed by them, challenged the sale deed particularly in respect of survey no.65, which was sold by the first defendant to defendant nos.2 to 5. In the said suit the plaintiffs gave an amendment application at Exh.72 wherein the plaintiffs sought to introduce into the plaint pleadings to the effect that the plaintiffs are

"protected tenants" within the meaning of the Bombay Tenancy and Agricultural Lands Act. The trial court rejected the amendment application mainly on the ground that the proposed amendment changes the nature and character of the suit, and seeks to introduce a new case on new facts sought to be propounded by the plaintiffs in a very old suit filed in the year 1988.

2. This rejection of the amendment application is the subject matter of the present revision.

3. With the assistance of the learned counsel for the petitioner I have examined not merely the amendment application, but also the suit plaint.

4. From the aforesaid examination it is found that the amendment application seeks to set up a new case that the plaintiffs are "protected tenants" within the meaning of the Bombay Tenancy and Agricultural Lands Act, whereas the examination of the plaint and particularly paragraphs 2 and 7 thereof indicate that the plaintiffs have challenged the sale deed by the first defendant in favour of the defendant nos.2 and 5 in respect of survey no.65, not only on the ground that they are entitled to exercise a so-called right of pre-emption, but also a substantive right on the ground that the sale is in respect of a "fragment" within the meaning of the provisions of Prevention of Fragmentation and Consolidation of Holdings Act, 1947, and that the purchasers i.e. defendant nos.2 to 5 are not even "agriculturists" within the meaning of the Bombay Tenancy and Agricultural Lands Act.

5. It is obvious that all the three issues viz. the issues sought to be introduced by the proposed amendment, as also the issues raised in the suit viz. whether the subject matter of the sale deed was a fragment or not and as to whether the purchasers viz. defendant nos.2 to 5 were agriculturists or not are issues which are beyond the jurisdiction of the civil court to decide. These issues can only be decided by the appropriate authorities under the provisions of the Fragmentation Act and the Bombay Tenancy Act.

6. It would, therefore, be appropriate that if the plaintiffs seek to establish their rights under these special statutes, and it is always open for the plaintiffs to approach the designated authorities under the special statutes, to obtain the necessary declaration from the specified authorities, and then present the relevant judgements to the civil court.

7. In the premises aforesaid I do not see any jurisdictional error in the impugned order of the trial court. In view of the observations and findings recorded hereinabove, learned counsel for the petitioners does not press the present revision and the same is permitted to be withdrawn. Rule is accordingly discharged with no order as to costs.

18.10.1999 (Y.B. BHATT J.)